

Gajanan Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Mar-21-2016

Judge : B.R. Gavai & A.S. Chandurkar

Appeal No. : Criminal Appeal No. 565 of 2013

Appellant : Gajanan

Respondent : State of Maharashtra

Judgement :

Oral Judgment: (B.R. Gavai, J.)

1. Being aggrieved by the Judgment and Order passed by the learned Additional Sessions Judge, Bhandara in Special Criminal (Atrocity) Case No.15 of 2011, dt.19.10.2013 thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.1,000/- and in default, to suffer rigorous imprisonment for three months, the appellant has approached this Court.

2. The prosecution case, as could be gathered from the material placed on record, is thus :

On 15.8.2011, at about 3.00 p.m., Complainant Balchand Anupam Idapate (PW-1) and his father Anupam Idapate were sitting in their house. Accused Gajanan Kisan Bawane came to their house and started chatting with the father of Complainant.

The accused demanded money from the father of first informant. Balchand Idapate (PW-1) - the first informant went to his field and returned home at about 3.30 p.m. At that time, he saw the accused running from the back side of his house carrying crow bar in his hand. When the Complainant went to the place where his father was sitting, he saw his father lying dead in a pool of blood. There were injuries on his head and on the side of head and blood was oozing from them. Balchand Idapate (PW-1), therefore, lodged oral report in Police Station below Exh.17. On the basis of said Oral report, F.I.R. bearing No.118 of 2011 came to be registered below Exh.18. On the basis of the F.I.R., investigation was set into motion. Charge sheet came to be filed for the offences punishable under Section 302 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Charges came to be framed and explained to the accused. The accused pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned trial Judge acquitted the accused for the offence punishable under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and passed the order of conviction and sentence as aforesaid.

Being aggrieved thereby, the present appeal.

3. None appeared for the appellant. Mr.V.P.Gangane, learned A.P.P. appearing on behalf of the State submits that the learned trial Judge after careful scrutiny of the evidence on record has passed an order of conviction. He submits that the prosecution has proved each and every incriminating circumstance beyond reasonable doubt. He further submits that the evidence regarding the accused last seen in the company of the deceased is unshattered. The learned A.P.P., therefore, submits that the appeal is without merits and as such, it be dismissed.

4. We have scrutinized the entire evidence on record with the assistance of the learned A.P.P. The present case is the case based upon the circumstantial evidence. By now it is a settled principle of law that, in a case based on circumstantial evidence, it is necessary for the prosecution to prove each and every circumstance beyond reasonable doubt. The prosecution has further to prove that the circumstances so proved form a complete chain that leads to no

other conclusion than guilt of the accused. In the light of this guiding principle, we will have to examine the present case.

5. Insofar as the finding in respect of death being homicidal in nature is concerned, in view of the evidence of Dr.Sandip Dhanraj Ghodeswar (PW-7) and the post mortem report below Exh.34 and the opinion of Dr.Sandip below Exh.35, we are of the considered view that no interference is warranted.

6. As could be gathered from the material placed on record, it is the prosecution case that the following circumstances are proved beyond reasonable doubt :

a) That the accused was last seen in the company of the deceased before occurrence of his death.

b) That the weapons and blood stained clothes are seized on the memorandum of the accused u/s.27 of the Indian Evidence Act.

c) That the blood found on the clothes of the accused shows that it was of blood group "B", which was the blood group of the deceased.

7. Insofar as the first circumstance regarding the last seen theory is concerned, nodoubt that if the prosecution proves that the time gap between the accused last seen in the company of the deceased and occurrence of death of deceased is so short that it could lead to no other conclusion than the one that it is only the accused who must have committed crime, it will be a strong circumstance against the accused. Insofar as this circumstance is concerned, prosecution has examined three witnesses namely Balchand Anuram Idapate (PW-1) - son of the deceased, Shrikrushna Sonu Salame (PW-4) - neighbour of the deceased and Gopikisan Sonu Salame (PW-5).

8. The evidence of Balchand Anuram Idapate (PW-1) -son of deceased is below Exh.16. He states in his evidence that, on the date of incident at about 2.00 p.m. The accused came to his house and demanded money from his father. His father did not pay money to the accused. He then went to the field. At that time, the accused and his father were talking together. When he returned home, he saw the accused running carrying sabbal in his hand. Balchand Idapate (PW-1) further

states that he saw his father lying in a pool of blood and he had injuries on his head. He has stated that the accused has committed murder of his father. It is pertinent to note that though, in his police statement, this witness has categorically stated that the accused had taken the iron rod with him while he was running, he has denied of making such statement in his cross-examination. However, the said contradiction is duly proved in the evidence of Balkrushna Dhannuji Paonikar (PW-12) -Assistant Police Commissioner.

It is further pertinent to note that Balchand Idapate (PW-1) has also admitted in his cross-examination that he did not try to chase the accused when he saw him running from his house. He has further admitted that, after seeing his father in a pool of blood, he called Shrikrushna Salame. He then went to village and called Police Patil. He covered the dead body of his father with a cloth. He further admitted that he simply touched head of his father. He has further admitted in his cross-examination that one may fall unconscious in case of assault on his head. He has further admitted that body of his father was lying as it is till preparation of inquest panchanama. It could thus be seen that the conduct of this witness in not making any attempt to save his father after he sustained injuries casts a serious doubt on veracity of this witness. From the tenor of cross-examination of this witness, it would be seen that the defence of accused appears to be that this witness has himself assaulted his father since the deceased was opposed to this witness working in Orissa.

9. The next witness on the last seen theory is Shrikrushna Sonu Salame (PW-4). He states in his evidence that, on the date of incident, at about 2.00 p.m., the deceased came to his house for giving him labour charges of Rs.200/-. He states that, after sometime, the son of deceased came to his house and asked him to go for lunch. Hence, the deceased went to his house. Thereafter, he and Balchand went to Barber for shaving. Thereafter, he and Balchand came to the house of Balchand. Accused and Balchand were sitting on the back side of the house of deceased Anuram and were chitchatting. Thereafter, he and Balchand went to the field of Balchand for watering crops. When they returned from the house of Balchand, he saw the accused carrying away sabbal with him from the house of Balchand. In his cross-examination, Shrikrushna Salame (PW-4) has admitted that

he had cordial relations with Balchand. He has further admitted that Balchand did not try to take his father to the hospital. He further admitted that he also did not try to take deceased Anuram to the hospital.

10. Gopikisan Sonu Salame (PW-5) has stated in his evidence that, on the day of incident, when he returned home from the field, he saw the accused and deceased Anuram sitting on the backside of the house of deceased. He then went to the market. When he returned, he came to know about murder of Anuram. This witness is real brother of Shrikrushna Salame. He has admitted that he has close relations with witness Balchand Idapate (PW-1).

11. As such all these witnesses would be interested witnesses. Nodoubt that a conviction could also be based on the basis of evidence of the interested witnesses. However, the evidence of such witnesses is required to be scrutinized with greater caution and only if it is found that their testimonies are credible, trustworthy and reliable, conviction could be based upon the same. The evidence of Balchand Idapate (PW-1) would show that his conduct is totally unnatural. When a person finds his father in an injured condition, his immediate reaction would be to provide immediate medical assistance to his father. However, this witness has clearly admitted that he did not make any attempt to give medical treatment to his father. The other witnesses are employees of Balchand Idapate. As such, possibility of Shrikrushna Salame (PW-4) and Gopikisan Salame (PW-5) deposing falsely at the instance of Balchand Idapate (PW-1) cannot be ruled out. Hence, we are of the considered view that it will not be safe to rest an order of conviction on the basis of sole testimonies of these witnesses. Nodoubt that if some incriminating circumstances are found to be proved against the accused, the evidence in respect of the accused and the deceased last seen together, as deposed by these three witnesses, could be used. We will, therefore, now consider the evidence with regard to other circumstances.

12. The prosecution relies on the memorandum of accused u/s.27 of the Indian Evidence Act and the recoveries made at the instance of the accused of the crow bar and the clothes used by him at the time of incident. Prosecution has examined Devanand Laldas Badole (PW-2) the panch witness in this regard. In the

memorandum given by the accused u/s.27 of the Indian Evidence Act, he has stated that he had concealed iron crow bar and the clothes used by him in commission of the crime in question in a hut in the field of his uncle Motiram Seetaram Bawane. It is the prosecution case that, on the basis of said memorandum, the clothes and the crow bar used by the accused at the time of commission of crime were seized. The incident has taken place on 15.8.2011. The hut in question is supposed to be in the field of uncle of the accused. Devanand Laldas Badole (PW-2) has admitted in his cross-examination that the agricultural work had started in the field. This witness has further admitted that the hut in question was situated in the field. Thus, it cannot be said that the recovery was made from the place which was exclusively within the knowledge of the accused. If the circumstance in respect of discovery by the accused on memorandum u/s.27 of the Indian Evidence Act itself is found to be doubtful, then further circumstance in respect of the report of Chemical Analyser finding blood stains of blood group "B" on the clothes of the accused could be of not much significance. It could thus be seen that the prosecution has failed to prove these circumstances also beyond reasonable doubt.

13. As has already been discussed hereinabove, unless the prosecution is in a position to establish that every hypothesis except guilt of the accused is ruled out, conviction in a case of circumstantial evidence would not be sustainable. It has been held by the Hon'ble Supreme Court in catena of Judgments that, however grave the suspicion be, it cannot take the place of proof beyond reasonable doubt. In the present case, we find that the prosecution has neither proved the incriminating circumstances beyond reasonable doubt nor has proved the chain of events leading to no other conclusion than the guilt of the accused. In the circumstances, the appeal deserves to be allowed. Hence, the following order

ORDER

The Criminal Appeal is allowed.

The order of conviction and sentence is set aside. The appellant is acquitted of the charges charged with.

The appellant is directed to be set at liberty, if not required in any other case.

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